IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Date of decision: 20.09.2006

Criminal Misc. Application No. 741 of 2006

1. Nandan Ram S/o Shri Mohan Ram
2. Naresh Ram, S/o Shri Nandan Ram
   Both residents of Village- Ujrad
   Post- Ujrad, Tehsil- Bhikiasain
   District Almora .....Applicant

Versus

1. State of Uttaranchal through Secretary
   Home Govt. of Uttaranchal
2. Tehsildar, Tehsil Bhikiasain
   District- Almora
3. Smt. Saruli Devi
   W/o Late Gopal Ram
   Village and Post Ujrad
   Tehsil Bhikiasain, District Almora .... Respondents.

Shri P.C. Bisht, learned counsel for the applicant.
Learned A.G.A. for respondents No. 1 and 2.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Date: 20.09.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 741 of 2006

1. Nandan Ram S/o Shri Mohan Ram
2. Naresh Ram, S/o Shri Nandan Ram
   Both residents of Village- Ujrad
   Post- Ujrad, Tehsil- Bhikiasain
   District Almora .....Applicant

Versus

1. State of Uttaranchal through Secretary
   Home Govt. of Uttaranchal
2. Tehsildar, Tehsil Bhikiasain
   District- Almora
3. Smt. Saruli Devi
   W/o Late Gopal Ram
   Village and Post Ujrad
   Tehsil Bhikiasain, District Almora .... Respondents.

Shri P.C. Bisht, learned counsel for the applicant.
Learned A.G.A. for respondents No. 1 and 2.

Hon'ble Prafulla C. Pant, J

Heard Shri P.C. Bisht, learned counsel for the applicant and learned A.G.A.

2. By means of this petition, moved under Section 482 of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.), the petitioner has challenged the order dated 10.01.2006, passed by Judicial Magistrate, Ranikhet, whereby on a complaint made by Saruli Devi, the Magistrate has directed the police to register and investigate the crime.

3. There is clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the

Government. The executive which is charged with a duty to a vigilance over law and order situation is obliged to prevent the crime and if an offence is alleged to have been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of Cr.P.C. its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173 (8) Cr.P.C., there commences the adjudication function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well-defined and well-demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate.

4. The following questions were referred to the Full Bench of the Allahabad High Court in the case of Prashant Gaur Vs. State of U.P. 1998 AWC 828, and the answers given by the Full Bench while deciding the above case are indicated below:

Question No. 1:	Answer:
Whether under Section 482 Cr.P.C. the High Court has inherent powers to interfere with the investigation by the Police?	Investigation into an offence is a statutory function of the police and the superintendence thereof is vested in the State Government. It is only in the rarest of rare cases, and that too, when it is found by the Court that the FIR and the investigation over a reasonable

length of time, do not disclose the commission of cognizable offence, or any offence of any kind, that the High Court may, under Section 482 of the Code interfere with the investigation.

Question No.2:	Answer:
Whether the High Court has powers to stay arrest during investigation?	Under Section 482 of the Code, the High Court, may not direct the stay of arrest during investigation except for a limited period in case of such exceptional nature as is referred in the preceding Paragraphs.

The Full Bench while deciding the same in the case of R.L. Yadav Vs. State, 1989, A.Cr.R. page 118 at 125 has observed as under:-

"20. In our opinion the High Court has no inherent power under Section 482 Cr.P.C. to interfere with the arrest of a person by a police officer even in violation of section 41 (1) (a) Cr.P.C. either when no offence is disclosed in the first information report or when the investigation is malafide as the inherent powers of the court to prevent the abuse of the process of the court or to otherwise secure the ends of justice come into play only after the charge sheet has been filed in court and no during investigation which may even by illegal and unauthorized. If the High Court is convinced that the power of arrest by a police officer will be exercised wrongly or malafide in violation of section 41(1) (a) Cr.P.C. the High Court can always issue a writ of mandamus under Article 226 of the Constitution

restraining the police officer from misusing his legal power."

5. In view of the above position of law, this petition for quashing impugned proceedings and stay of arrest, is dismissed in limine with liberty to the petitioner to seek remedy, available to him. (All pending applications in this case, stand disposed of).

Dt. 20.09.2006 **(Prafulla C. Pant, J.)**

S